

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARVIN R. MUCHMORE

Claimant

VS.

J. B. HUNT TRANSPORT, INC.

Respondent

Self-Insured

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Docket No. 206,625

ORDER

Claimant appeals from a preliminary hearing Order of December 9, 1996, wherein Administrative Law Judge Nelsonna Potts Barnes denied claimant benefits finding that the contract of employment between claimant and respondent was found to be in Oklahoma and not in Kansas.

ISSUES

Whether there is jurisdiction under the Kansas Workers Compensation Act to decide this matter or whether this matter is an action created under contract in Oklahoma.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant alleges the Kansas Workers Compensation Act should apply to the injury suffered on or about September 7, 1995, while claimant was in the employment of respondent, J. B. Hunt Transport. Claimant's justification for this argument stems from his

allegation that the employment contract between claimant and respondent was formed in Kansas. K.S.A. 44-506 states in part:

“The workmen’s compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen’s compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides”

The parties acknowledge respondent’s principal place of employment is not within this state. Thus, in order for this matter to be under the jurisdiction of the Kansas Workers Compensation Act the contract of employment must have been made within the state. Case law dictates that in order for a contract to fall within the parameters of the Kansas Workers Compensation Act there must be a last act necessary for its formation and that last act must have occurred in Kansas. Smith v. McBride & Dehmer Construction Co., 216 Kan. 76, 530 P.2d 1222 (1975).

In this instance, while claimant made initial contact with respondent while he was in Kansas, the contract between claimant and respondent required that claimant relocate to Oklahoma for the purpose of attending a truck-driving school, pass a physical examination, pass a written test, and complete numerous employment forms. Claimant’s employment contract, by claimant’s own admission, was not final until these acts were completed. The truck-driving school was located in Oklahoma and all of the appropriate documentation, with the exception of an application for employment, was completed while claimant was in Oklahoma. Claimant’s contract for hire was signed in Oklahoma, his physical took place in Oklahoma, his license was provided by the State of Oklahoma, and his initial contact with both his rig and his training driver occurred while he was in Oklahoma.

The Appeals Board finds that based upon the totality of the evidence it is apparent that the last act necessary for the formation of the employment contract in this instance occurred while claimant was in Oklahoma. Thus, the Kansas Workers Compensation Act would not have jurisdiction over this matter and the Order of the Administrative Law Judge dated December 9, 1996, should be, and is hereby, affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the

Order of Administrative Law Judge Nelsonna Potts Barnes dated December 9, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of February 1997.

BOARD MEMBER

c: Cortland Q. Clotfelter, Wichita, KS
Jeffrey Slattery, Kansas City, MO
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director